

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 02-0327P

Gross and Adjusted Gross Income Tax

For Calendar Years 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, and 1999

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

At audit it was determined that the taxpayer has not filed Indiana income tax returns and was assessed a penalty. Taxpayer has sales representatives operating in Indiana, technicians to setup, service, and repair machinery and provide training. The company has maintained inventories in Indiana, based rented vehicles in Indiana, and has Indiana resident employees.

Taxpayer filed a penalty protest dated June 11, 2002 stating that it did not realize that its activities in the state of Indiana created nexus for income tax purposes. Thus, it inadvertently failed to file Indiana Corporate Income Tax Returns for the years at issue.

I. Tax Administration – Penalty

DISCUSSION

Taxpayer protests the penalty assessed and states it did not willfully intend to neglect its Indiana income tax filing and payment obligations. Taxpayer states that as a result of the audit, it will diligently comply with all of its Indiana State tax filing obligations and requests an abatement of the penalty.

45 IAC 15-11-2(b) states, "Negligence, on behalf of the taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or

inattention to duties placed upon the taxpayer by the Indiana code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.”

Taxpayer failed to file Indiana income tax return although it was registered to do business in Indiana and registered to withhold income taxes on its employees in Indiana. Taxpayer did not make itself aware of the Indiana tax laws when doing business in this state and has not provided reasonable cause to allow the department to waive the penalty.

FINDING

Taxpayer’s protest is denied.

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